PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Famous Barr #47
DOCKET NO.: 05-00346.001-C-3
PARCEL NO.: 21-02-126-010

The parties of record before the Property Tax Appeal Board are Famous Barr #47, the appellant, by attorneys Gregory J. Lafakis and Ellen Berkshire of The Law Offices of Liston & Lafakis, P.C., Chicago; the McLean County Board of Review; and Bloomington Public School Dist. No 87, intervenor, by attorney John L. Pratt of Pratt and Pratt, P.C., Bloomington.

The subject property consists of a 96,267 square foot site improved with a two-story anchor department store that contains 151,018 square feet. The subject building was constructed in 1999 and has steel framing that supports concrete block walls with stucco exterior. The store has clear ceiling heights of 12 to 16 feet. The first floor contains 76,393 square feet and the second level contains 74,625 square feet. The second floor also has approximately 24,000 square feet of unfinished area. The property is one of the anchor stores at the Eastland Mall in Bloomington.

The issue in this appeal is the determination of the correct market value of the subject property for assessment purposes as of January 1, 2005.

The appellant contends the assessment of the subject property is excessive and not reflective of the property's market value. The appellant contends the subject property had a market value of $5,100,000 as of January 1, 2005. In support of this argument the appellant submitted an appraisal of the subject property prepared by J. Edward Salisbury ("Salisbury") of Salisbury & Associates, Inc.

Salisbury was called as the appellant's first witness. Salisbury is a State of Illinois Certified General Real Estate Appraiser. Salisbury also has the Certified Illinois Assessment Officer

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds *a reduction* in the assessment of the property as established by the **McLean** County Board of Review is warranted. The correct assessed valuation of the property is:

LAND:	$ 120,182
IMPR.:	$ 1,823,773
TOTAL:	$ 1,943,955

Subject only to the State multiplier as applicable.

(CIAO) designation from the Illinois Property Assessment Institute and the Certified Assessment Evaluator (CAE) designation awarded by the International Association of Assessing Officers (IAA0). Salisbury has previously appraised 10 to 15 anchor stores associated with regional malls.

Salisbury identified Taxpayer's Exhibit No. 1 as the appraisal of the subject property he had prepared. The appraisal was described as a summary report of a limited appraisal. The witness explained that a limited appraisal means that he made a departure from the Uniform Standards of Professional Appraisal Practice (USPAP) by electing not to use the cost approach, one of the three approaches to value. Salisbury testified he did not use the cost approach because anchor stores are unique and in malls create their own market. He explained that anchor stores tend to sell for about the same price regardless of age. The witness testified that sales of new anchor stores would be less representative because of the significant amount of depreciation associated with a sale.

The appellant's appraiser testified the preferred method of valuation of anchor stores is the sales comparison approach. He testified there is a symbiotic relationship with anchor stores and the malls they are associated with. According to Salisbury malls rely on anchor stores to bring in people which in turn make the inline stores successful. The witness explained that mall developers first try to line up anchor stores willing to locate in the mall to surround the inline stores. Salisbury testified that as a result, anchor stores tend to sell in a very tight range and rents are very consistent in a very short range.

Salisbury testified the subject property is attached to the Eastland Mall, a very strong commercial area and the strongest commercial area in Bloomington-Normal. Salisbury testified he has been in the subject property a number of times but the official inspection date was May 23, 2006, where he conducted a full physical interior and exterior inspection. The purpose of his appraisal was to estimate market value as of January 1, 2005. He appraised the unencumbered fee simple interest and categorized the subject property as an anchor store for a regional mall. Salisbury testified the improvements were constructed in 1999 and were approximately six years old as of January 1, 2005. He was of the opinion the improvements were in good condition. The witness was of the opinion the highest and best use of the subject as improved was its continued commercial use as developed. In estimating the market value of the subject property Salisbury developed the income and sales comparison approaches.

The first approach to value developed by Salisbury was the income approach. The initial step under the income approach was to estimate the potential gross income using market rent. To estimate the subject's market rent Salisbury used eleven rental comparables. Seven of the comparables were located in the Illinois cities of Alton, Normal, St. Charles, Bloomington and Lincolnwood. Four of the comparables were located in either Indiana or Michigan. Salisbury testified that the comparables were anchor stores in regional malls. Salisbury testified his rental comparable number 9 is located in the same regional mall as the subject property. The appraisal indicated these comparable rentals ranged in size from 79,216 to 161,630 square feet of leased area. The comparables had leases that commenced from 1990 to 2003. Six of the comparables had rents ranging from $3.06 to $4.25 per square foot. The five remaining comparables had a combination of base rents and rents based on a percentage of sales. Salisbury indicated these comparables had rents ranging from $3.34 to $3.92 per square foot. Comparable nine, an anchor store in the Eastland Mall, had rents from 2002 through 2004 ranging from $3.38 to $3.52 per square foot. Salisbury testified none of the rental comparables is a free-standing building. He explained there is a difference between anchor department stores and freestanding buildings. Salisbury testified that freestanding buildings have different tenants and different investment criteria than anchor department stores. He testified big box stores have a limited number of users and these big box tenants are not going to be anchor stores in malls. Salisbury explained that it is critical for a mall with 90 to 150 inline stores to obtain high-quality tenants as anchors. The appellant's appraiser explained if you have a freestanding big box store, income can only be derived from that one property.

Salisbury also reviewed the retail sales at the subject property from 2001 through 2005. Retail sales at the subject property declined from $14,111,000 to $12,024,0000 from 2001 to 2005. During this period the subject property had sales per square foot of gross building area ranging from $93.44 to $79.62 per square foot and sales per square foot of retail area ranging from $114.11 to $97.24 per square foot. During the years 2003 to 2005 the subject had average sales per square foot of gross building area of $81.39 per square foot. Salisbury compared the subjects actual income to national and regional trends found in "Dollars and Cent of Shopping Centers: 2004". He indicated that U.S. median was $153.15 per square foot and the Midwestern median was $146.08 per square foot. Salisbury acknowledged he had a typographical error the top of page 41 of his appraisal concerning the subject's three year average retail sales per square foot of gross building area. Salisbury testified the subject's sales were below the national median average. Salisbury's report also indicated the U.S. median rent per square foot for anchor stores was $2.85 per square foot and for Midwestern stores the median was $2.45 per square foot. Salisbury also reported that the United States median rent based on a percentage of sales was 2% with a range from 1.5% to 3%. If the subject were leased on a percentage basis and applying the national median of 2% to the average sales generated by the subject from 2003 through 2005 of $12,291,000 results in a rent of $1.99 per square foot of retail area. Salisbury testified the subject property is performing below the data obtained from the market. Based on this analysis Salisbury estimated the subject property would have a market rent of $3.50 per square foot of gross building area resulting in a potential gross income of $528,563.

Salisbury estimated the subject property would have a vacancy and collection loss of 5%. Deducting 5% for the vacancy and collection loss resulted in an effective gross income of $502,135. Salisbury also estimated that operating expenses of 5% of effective gross income should be deducted for management of the investment and reserves for replacement of the major components resulting in a net operating income of $477,128.

Salisbury next estimated the capitalization rate using data from the market and the use of the direct capitalization approach. Salisbury also reviewed the First Quarter, 2005 edition of Valuation of Insights and Perspectives where national market indicators for the fourth quarter of 2004 are reported. After considering this information, Salisbury estimated the subject would have an overall capitalization rate of 9.5%. Capitalizing the net income of $528,563 using the capitalization rate of 9.5% resulted in an estimate of value under the income approach of $5,000,000.

The next approach to value developed by Salisbury was the sales comparison approach. He explained his report contained errors on page 50 where he described the comparable as a one-story as opposed to a two story building; page 55 where the property was sold by May Department Store not Foley's to Baybrook Mall; and in the adjustment grid on page 64. Under the sales comparison approach Salisbury used eight comparable sales located in Illinois, Ohio, Michigan, Texas and Colorado. The comparables ranged in size from 94,341 to 254,720 square feet and in age from 5 to 35 years old. The sales occurred from January 2002 to July 2005 for prices ranging from $2,750,000 to $9,000,000 or from $25.77 to $37.63 per square foot of building area. Based on these sales Salisbury estimated the subject property had an indicated market value under the sales comparison approach of $34.00 per square foot of building area resulting in a total estimate of value of $5,150,000.

Salisbury testified that none of the sales were freestanding stores and all were associated with regional malls. He further testified that he verified each of the sales with either the buyer or seller. Salisbury noted that sales 1 through 5 were older stores while sales 6 through 8 were newer ranging in age from 5 to 8 years old. He also noted these three sales were associated with newer malls causing him to make a little bit of a negative adjustment because of age.

In reconciling the two approaches to value Salisbury placed most weight on the sales comparison approach and was of the opinion the income approach supported the conclusion derived under the sales comparison approach. Salisbury was of the opinion the subject property had a market value of $5,100,000 as of January 1, 2005.

Under cross-examination Salisbury agreed the anchor store needs are satisfactorily met by this property. Salisbury acknowledged he did not value the subject land as vacant and did not prepare a cost approach to value. The witness testified that the owner had not instructed him to not prepare a cost approach to value. Salisbury testified it was his decision to make a summary limited appraisal. Salisbury also testified he did not know how much it cost to build the subject building. Salisbury was shown Intervenor's Exhibit No. 1, which was identified as a McLean County Assessment Complaint form. The exhibit purports to be a complaint form filed on the subject property dated January 17, 2003, contesting the 2002 assessment. Salisbury acknowledged that page 2 of the exhibit indicated the building was constructed in November 1999 for a construction cost of $8,845,663.

Salisbury indicated that the total economic life of anchor stores could range from 35 to 50 years but it would be guessing as to the total economic life. Salisbury opined, however, there would be significant depreciation in the subject building.

Salisbury agreed that a mall needs both anchor stores and inline stores. He testified that anchor stores have significantly reduced rent in comparison to inline stores. Salisbury testified that in theory the anchor stores draw shoppers and as shoppers go from one anchor store to another they pass inline stores and stop to shop. The witness also testified that rents for inline stores can range from $15 to $50 per square foot while rents for anchor stores can range from $2.50 to $4.50 per square foot.

Under the income approach Salisbury testified he did not use any additional value other than the rent. He also acknowledged that his vacancy allowance and expense deductions are estimates. He also did not make any adjustments to account for operating agreements. Salisbury acknowledged that the rents paid for his comparables were paid to the mall owner. With respect to rental 4, the rent was calculated based on a percent of sales using 1993 retail sales. Salisbury also acknowledged rental number 6 was located in Anderson, Indiana and was 34 years older than the subject being constructed in 1965. He also acknowledged his comparable rental 9 is a Sears store located in the same mall as the subject. This comparable was constructed in 1966 and was recently renovated by Sears. Sears had a base rent of $245,916 per year plus a rent based on a percentage of sales. The rent for Sears for 2002 through 2004 was $405,916, $413,002 and $395,811, respectively. Using the 2002 rent indicates that that Sears had sales in excess of about $17,000,000. Salisbury acknowledge that his comparable rental number 10 had a lease commencing in August 2003 with a base rent of $3.92 per square foot plus a percentage if gross sales exceed $16,000,000. Under cross-examination Salisbury acknowledge that his rental 11 was the same property as his rental 8, which was a mistake to include the property twice.

Salisbury acknowledged that on page 45 of his report the average internal rate of return as reported by Valuation Insights and Perspectives was 9.64%. Applying this internal rate of return to the reported cost on of the improvement on Intervenor's Exhibit No. 1 would result in an income requirement of $852,722. Salisbury agreed that dividing his finding of net income of $477,128 by the reported cost of $8,845,663 results in a rate of return of 5.39%.

With respect to comparable sale number 1 Salisbury agreed this was a Montgomery Wards located in Springfield, Illinois that was in bankruptcy and vacant at the time of sale. Salisbury agreed his sale number 2 was a two-story store that was a Montgomery Wards located in Lombard vacant at the time of sale. This building was 30 years older than the subject. Sale number 3 was located in downtown Columbus, Ohio and was vacant at the time of sale. This building was 10 years older than the subject. Sale 4 was located in Dearborn, Michigan and was 26 years old at the time of sale. Sale number 5 is located in Friendswood, Texas and is 21 years older than the subject. Sale 6 was a Lord & Taylor store located in Littleton, Colorado. Sale 7 was also a Lord & Taylor located in Broomfield Colorado. Sale 8 is located in Columbus, Ohio. Salisbury indicted that he had not been to comparable sales 5, 6, and 7.

Salisbury was question about the statement on page 34 of his report where he opined "[t]he subject is improved with an older building." He acknowledged, however, in 2005 the subject was in its fifth year of operation and was relatively new. Salisbury was questioned about the comment on page 13 of his report where he stated, "As a check against the other approaches, the Cost Approach was analyzed and considered, but found to contribute no meaningful conclusions with respect to the market value of the subject property." Salisbury acknowledged; however, he did not develop a cost approach. Salisbury was also questioned about page 69, number 8 under the Certification where he stated in part that, "I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report." He agreed that this statement was wrong. Salisbury also acknowledged a typo error in the last sentence on page 34 of his report referring to page 15.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling $2,556,666 was disclosed. The subject's assessment reflects a market value of approximately $7,693,850 using the 2005 three year median level of assessments for McLean County of 33.23%. The board of review called as its witness Michael Ireland, assessor for the City of Bloomington. Ireland submitted a packet of information, marked as BOR Group Exhibit No. 1, to demonstrate how the property was assessed. He testified he focused on local market conditions, specifically local rents on larger box retail stores. Ireland identified page A as the subject's property record card wherein the subject's 2005 assessment totaling $2,556,666 was disclosed. Page B was identified as the improvement description showing the subject was a two-story building constructed in 1999 with 75,327 ground floor square feet and 123,295 square feet of gross usable area. Page C was identified as a electronic sketch of the subject building. The witness identified page D as an aerial photo of the Eastland Mall with the subject property being identified with parcel number 126-010. Ireland testified the subject parcel encompasses approximately 2.21 acres. Page E depicted the assessment of the subject land and four comparables to demonstrate the land was equitably assessed. The subject was depicted as having a land assessment of $122,706 or $3.82 per square foot of land area. The four land comparables ranged in size from 98,818 to 810,608 square feet and had assessments ranging from $115,701 to $936,327 or from $3.05 to $3.51 per square foot of land area. Ireland identified page F as being the assessments of anchor stores at Eastland Mall. The comparables ranged in size from 63,021 to 134,395 square feet of gross usable area. Their improvement assessments ranged from $1,470,222 to $1,676,265 or from $12.47 to $23.33 per square foot of gross usable area. The subject property had an improvement assessment of $2,436,484 or $19.76 per square foot of gross usable area. Ireland testified page G contained a replacement cost new using the Marshall and Swift cost estimator as of December 12, 2006. The document indicated the subject would have a cost new of $10,388,836. From this $311,666 was deducted for depreciation to arrive at a depreciated improvement value of $10,077,170. To this amount the land value of $962,680 and the value of the paving of $142,710 were added to arrive at an estimate of value under the cost approach of $11,182,560. Ireland described page M as being the lease schedule for a 55,200 square foot building in Bloomington that covers a 7 year period. The rent ranged from $5.75 to $6.75 per square foot over this seven year period. Ireland testified he was also aware of a lease on Kay's Merchandise of $4.50 and $5.00 per square foot. Using this data Ireland created an income approach using a discounted cash flow analysis. He estimated a rent of $6.00 per square, a vacancy and collection loss of 1%, an expense ratio of 5%, a discount rate of 10% and a resale capitalization rate of 9.00%. Using this data Ireland estimated the subject had a market value of $6,929,872. Page N was identified as sales of five retail establishments. The document disclosed four of the buildings ranged in size from 5,280 to 7,560 square feet. The sales occurred from February 2004 to October 2006 for prices ranging from $268,400 to $1,500,000 or from $49.70 to $244.92 per square foot of building area. Ireland also identified the addendum attached to the packet of information. The cover letter prepared by Ireland stated he estimated the subject property had a market value of $7,000,000. Based on Ireland's presentation the board of review offered to stipulate to an assessment of $2,333,100 to reflect a market value of $7,000,000.

Under cross-examination Ireland agreed the subject site had 2.21 acres and the building had a gross area of approximately 150,000 square feet with a usable area of 123,295 square feet. Ireland also testified he prepared the evidence in the packet. The witness testified he categorized the subject as retail space and agreed the property was built in 1999. With respect to the price paid for the land, Ireland had documentation in the addendum indicating the purchase price of the land was $0 but that was in lieu of a $2.2 million dollar contribution made to the developer for site work. The documentation indicated the building pad was 2.207 acres and there was another 5.66 acres for parking. Dividing the $2.2 million by the combined size of the land resulted in a unit value of $6.42 per square foot. Ireland agreed that page E disclosed the subject had the highest land assessment per square foot and comparables 1, 2 and 4 were significantly larger than the subject. He also agreed that page F depicting anchor store equity comparables at the mall reflected values ranging from $37.42 to approximately $70.00 per square foot. He also agreed the comparable sales on page N were 5% or less the building size of the subject. Ireland also acknowledge page O of his packet was a commercial building sale containing 75,275 square feet that was constructed in 1990. The improvements were located on a 477,069 square foot. This property sold in December 2003 for a price of $7,450,000 or $98.97 per square foot of building area. Ireland noted this sale contained excess land that had since been developed. Ireland testified that he had not appraised an anchor store at a regional mall other than as his duties as the assessor. He also did not consider his submission an appraisal.

Ireland testified he was familiar with the document marked as Intervenor's Exhibit No. 1, which is an assessment complaint filed by May Department Store on the subject property in 2002 while Ireland was employed as the assessor. He agreed that the complaint indicated a construction date of November 1999 and a cost of $8,845,663, which appeared to be reasonable to Ireland as the cost of construction. With respect to his income approach Ireland used a rental of approximately $740,000 and when divided by the reported construction cost results in a rate of approximately 8%.

The intervening school district submitted an appraisal prepared by Robert C. Gorman of The Gorman Group, Ltd. in support of its contention of the correct assessment of the subject property. Gorman estimated the subject property had a market value of $10,750,000 as of January 1, 2005. Gorman was called as a witness on behalf of the school district.

Gorman identified Intervenor's Exhibit No. 2 as the narrative appraisal he prepared on the subject property. Gorman has the Member of the Appraisal Institute (MAI) designation and has the General Certified Appraiser license with the State of Illinois. Gorman is also a licensed appraiser in Indiana, Wisconsin, Michigan, and Florida. Gorman testified he has appraised a variety of properties including shopping centers and anchor stores. He testified his appraisal work spans the country and he has performed a lot of work in Illinois. Gorman testified he estimated the fair market value of the fee simple unencumbered interest of the subject property.

Gorman testified the subject is adjacent and attached to Eastland Mall, which he described as an excellent mall that fits within the top 10% in the United States. Gorman testified the subject building was five years old as of the effective date of the appraisal. On page 7 of his report Gorman briefly described the subject as a "big-box" store attached to the Eastland Mall and is of the type commonly referred to as "anchor stores." He further testified the subject has adequate parking along with easements to use the parking of adjacent spots. He was of the opinion the highest and best use of the subject as improved was its existing use. In estimating the market value of the subject property Gorman utilized the three approaches to value.

The first approach to value developed by Gorman was the cost approach to value. The initial step under the cost approach was to estimate the land value using nine land sales located in Bloomington and Normal. The sites ranged in size from .75 to 9.29 acres. The sales occurred from January 2002 and September 2006 for prices ranging from $498,863 to $4,249,807. On a unit basis the prices ranged from approximately $347,882 to $1,200,313 per acre or from $7.99 to $27.56 per square foot of land area. In explaining his land sales he noted sale 1 was located at the next street south of the subject and this was subsequently divided in to land sales 2, 3, and 4. He testified that the only location that might be better would be adjacent to the subject's mall. Sale 5 was a 1.434 acre site adjacent to the subject mall that sold in July 2005 for a price of $7.99 per square foot. Sale 6 was a 1.5667 acre site adjacent to the mall that sold in July 2005 for a price of $11.01 per square foot. At the time of sale land sale 6 was improved with a medical office building, which is still in place. The witness described sales 7 and 8 as being related and part of a former Menards which was razed. Gorman explained that land sales 9 and 10 were adjacent to College Hills Mall in Normal and sold in June 2004 and September 2006 for prices of $10.00 and $11.00 per square foot, respectively. Gorman testified that land sale 11 was improved with a restaurant when it sold. The restaurant was to be razed and replaced with a strip shopping center. Land sale 12 was the farthest sale north of the subject property that was subsequently improved with a bank. Based on these land sales Gorman estimated the subject's land had a market value of $20.00 per square foot or $2,000,000. He described this estimate as being conservative.

Gorman's next step under the cost approach was to estimate the replacement cost new of the improvements using the Marshall Valuation Service. Gorman's calculations were on page 40 of his appraisal. He estimated the subject had a replacement cost new of $64.65 per square foot resulting in a cost estimate of $9,739,781. From this the appraiser deducted 10% for physical depreciation using the age life method using the subject's age of 5 years and expected life of 50 years taken from the Marshall Valuation Service. Gorman concluded the subject building suffered from no functional or external obsolescence. The appraiser than added $100,000 for site improvements and a land value of $2,000,000 to arrive at an estimate of value under the cost approach of $10,900,000. The witness was of the opinion his estimate of the cost new was reasonable when compared to the construction costs reported on Intervenor's Exhibit No. 1 of $8,845,000.

The next approach to value developed by Gorman was the income approach. The first step under this approach was to estimate the subject's market rent. On page 41 of his appraisal Gorman stated that, "As an anchor to a very large regional mall, the subject is a type of big box that is typically either owner occupied or is owned in common with the rest of the shopping center." In estimating the subject's market rent the appraiser completed a survey of anchor and big box stores. The appraisal included a list of 49 stores with 23 located in Illinois. The appraisal contained the company name, city, state, square footage, rent per square foot and lease year for each rental comparable. The appraisal did not otherwise distinguish or identify each of the rental comparables as either an anchor store to a regional mall or a freestanding big box store. The lease dates ranged from

1981 to 2006. The size of the comparables ranged from 19,000 to 163,370 square feet. The rentals ranged from $3.06 to $13.27 per square foot of building area. Based on this data the appraiser estimated the subject property had a market rent of $7.00 per square foot resulting in a potential gross income of $1,054,578. As a check the appraisal contained two regression analyses of the data using rent versus size and rent versus lease year. The appraiser estimated the vacancy and collection loss of 1.5% resulting in an effective gross income of $1,038,759.33. The appraiser next deducted 2% of effective gross income for management expenses and 2% of effective gross income for reserves to arrive at a net income of $997,208.95. Using the mortgage equity technique Gorman estimated the subject would have a capitalization rate of 9.5%. Dividing the estimated net income by the capitalization rate resulted in an estimate of value under the income approach of $10,500,000.

The final approach to value developed by Gorman was the market approach. Gorman used five sales located in the Illinois cities of Schaumburg, Lake Zurich and Orland Park. Comparable sale number 1 was a freestanding, one-story single tenant retail store with 77,721 square feet located on a 6.9 acre site that was sold by Kohl's in January 2003 for a price of $5,725,000 or $73.66 per square foot. Sale number 2 was improved with a freestanding masonry constructed single-tenant retail store with 88,306 square feet located on a 16.09 acre site that sold in November 2001 for a price of $9,258,983 or $104.85 per square foot of building area. This building was fully leased at the time of sale for either $9.07 or $9.90 per square foot. Sale number 3 was improved with a 163,000 square foot building located on a 554,183 site that was part of the Orland Square shopping center. The report indicates the property was sold by the occupant who retained possession. Gorman testified this sale had problems because it was one of a group of buildings that was sold by Carson's and the price was allocated. He further indicated that this transaction would be equivalent to a sale-leaseback. The sale occurred in August 1998 for a price of $14,905,675 or $91.44 per square foot. Sale number 4 was the sale of a Montgomery Wards store in Orland Park that was attached to a regional mall that closed. The report also noted this was a bankruptcy sale. Gorman testified that both Montgomery Wards and the shopping center went bankrupt at different times. He further testified that the store and shopping center were a disaster. The building was 10 years old and contained 155,000 square feet located on a 10 acre site. The sale occurred in July 2001 for a price of $4,500,000 or $29.03 per square foot. Sale number 5 was a 32,000 square foot building constructed in 1980 located on a 16,000 square foot site. The sale occurred in July 1998 for a price of $2,625,000 or $82.03 per square foot. The report indicated this sale was part of the Orland Park Place shopping center that went defunct. Gorman testified that all his sales were from Illinois and within 150 miles of the subject property. He also indicated that he had visited each of the sales. Based on this data the appraiser estimated the subject property had a market value of $73.00 per square foot resulting in an estimate of value under the market approach of $11,000,000.

In correlating the three approaches to value the appraiser gave most weight to the cost and income approaches and estimated the subject property had a market value of $10,750,000 as of January 1, 2005.

Under cross-examination Gorman was questioned about operating agreements and testified he did not know how they operated and did not do any research because he valued the property as being unencumbered. Gorman was questioned as to whether he considered the terms big box store and anchor department store interchangeable. He testified that there is a difference between a store that is attached to a mall and a big box store that is unattached. He described the subject as both a big box store attached to a mall and an anchor store. Gorman did not know if in appraisal terminology big box store is the same as an anchor department store.

Gorman was questioned about comments on page 7 of his report dealing with sales at regional malls. The Dollars and Cents of Shopping Centers:2004 reported average sales of the upper ten percent of regional malls is $254.62 per square foot. He indicated that SEC filings for 2005 indicated that sales in Eastland Mall averaged $318.00 per square foot. He acknowledged these figures included sales of inline stores.

He agreed the subject building has approximately 151,000 square feet and approximately 24,000 square feet is unfinished area.

With respect to his land sales Gorman acknowledged that sale number one was improved with a motel that was subsequently razed. After demolition of the hotel and site preparation including the construction of streets, the site was subsequently subdivided. Gorman agreed the subdivided lots were improved with a 13,000 to 14,000 square foot retail shopping center, a doughnut shop and bank. He thought that the Eastland Mall purchased land sales 5 and 6. He acknowledged that sale 7 had a building in place at the time it sold and agreed that sale 8 was actually a portion of sale 7 and was sold for approximately $10.00 per square foot. Gorman also testified that considered the sale of the subject land but didn't think it was necessary to be in the report.

With respect to the cost of the improvements Gorman agreed that the cost reported by the owner on the board of review complaint form sounded reasonable. However, Gorman used the Marshall Valuation Manual to develop an estimate of cost new. He also used the manual to estimate the subject had 10% depreciation. He did not make any deduction for functional obsolescence even though approximately 16% of the building was not used as retail space.

With respect to the comparable rentals the appraiser stated that they are big box stores with some attached to malls and some aren't attached to malls. He indicated that the rentals are not all competing properties to each other and stated some operate complementary to one another. Gorman also agreed that he used rentals located in Illinois, Texas, Oklahoma, Pennsylvania, South Carolina, Ohio, Michigan, Georgia, Minnesota, Colorado, Indiana, Arizona, Florida, Washington, New Jersey, California, and New Mexico. He acknowledged that he used one rental adjacent to the subject identified as a Sears that had a rental of $3.45 per square foot and a lease date of 2003. Gorman was also questioned about whether the rental comparables that contained from 19,000 to 24,000 square feet are properly classified as big box stores. The witness was also questioned about rentals that were listed twice and indicated those were mistakes. The witness did not know if double counting these stores would change his regression analysis. Gorman agreed that a major influencing factor of this type of property is attachment to a regional mall. Gorman did not know how many attached anchor department stores were included in his comparable rentals.

Gorman agreed that his comparable sale number 1 was not attached to a regional mall. The appraiser also agreed his comparable sale number 2 is a freestanding store not connected to a regional mall. Gorman understood that sale number 2 was built to suit Kohl's, Kohl's leased the property, and somebody sold the building with the lease in place. Gorman agreed that sale number 3 that occurred in 1998 and is dated. He indicated this sale was an allocation, in a vibrant retail location and the transaction was a sales-leaseback. Gorman acknowledged that sale 4 was in a mall that was "the pits" located across the street from sale 3. Gorman also agreed that sale 5 occurred in 1998 and was less than half the size of the subject. Gorman further agreed that all his comparable sales are from the Chicago metropolitan area. The appraiser was of the opinion his sales comparison approach wasn't as reliable as the other two approaches.

Based on this evidence and testimony the intervening taxing district requested the subject's assessment be increased to reflect a market value of $10,750,000. No other witnesses were called on behalf of the intervenor.

The appellant called as its rebuttal witness real estate appraiser Joseph Ryan to discuss his review of the Gorman appraisal and the valuation evidence submitted by the board of review. The intervenor objected to Ryan giving testimony as a rebuttal witness because he had not previously submitted a review appraisal report or been present during the course of the entire hearing to observe and hear the testimony provided by Ireland and Gorman. At the hearing the Board reserved ruling on the objection and allowed Ryan to testify with the caveat that the intervenor had a standing objection to the testimony.

The Board sustains the objection and will not give any consideration or weight to the testimony provided by Ryan. A review of the record disclosed that by letter dated July 18, 2007, the appellant was provided a copy of the evidence submitted by the other parties to the appeal and further informed that it was granted a 30-day rebuttal period. Section 1910.66 of the rules of the Property Tax Appeal Board provides in part that:

Section 1910.66 Rebuttal Evidence

a) Upon receipt of the argument and accompanying documentation filed by a party, any other party may, within 30 days after the postmark date of the Board's notice, file written or documentary rebuttal evidence. Rebuttal evidence shall consist of written or documentary evidence submitted to explain, repel, counteract or disprove facts given in evidence by an adverse party and must tend to explain or contradict or disprove evidence offered by an adverse party. **Rebuttal evidence shall include a written factual critique based on applicable facts and law, a review appraisal, or an analysis of an adverse party's appraisal prepared by a person who is an expert in the appraisal of real estate. This written critique, review appraisal, or analysis must be submitted within the responding party's 30-day rebuttal period pursuant to this Section. (Emphasis added).**

b) In any appeal in which a change in assessed valuation of $100,000 or more is sought, the Board shall grant one 30-day extension of time to submit rebuttal evidence upon good cause shown in writing. Good cause shall include the complexity of the appeal, the volume of the evidence submitted by an opposing party, and the inability of a rebuttal appraiser to complete the review and written critique within the 30-day filing period. A request for an extension of time to submit rebuttal evidence shall be in writing, supported by affidavit, and served on the Board and other parties to the appeal. No further extensions of time to submit rebuttal evidence shall be granted . . ..

86 Ill.Admin.Code 1910.66(a) & (b). In this appeal the appellant did not submit any written rebuttal evidence, review appraisal or

written critique or an analysis of the Gorman appraisal prepared by an expert in the appraisal of real estate as required by section 1910.66 of the rules of the Property Tax Appeal Board. The Board finds that by allowing Joseph Ryan to testify to his review of the Gorman appraisal submitted by the intervening school district would be a violation of section 1910.66 of the Board's rules. In essence the appellant is attempting to circumvent the rule by providing oral appraisal review testimony without any written critique of the school district's appraisal as required by the rule in advance of the hearing. This violates both the intent and spirit of the rule which is to provide a limited form of discovery and to put the opponent on notice of potential flaws in his expert's analysis. For these reasons the Board sustains the intervenor's objection to the appraisal review testimony provided by Ryan. In reaching its determination of the correct assessment of the subject property, the Board will not give any weight or consideration to the testimony provided by Ryan during the course of the hearing.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record supports a reduction in the subject's assessment.

The issue before the Property Tax Appeal Board is the determination of the market value of the subject property as of January 1, 2005, for assessment purposes. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to so to do. <u>Springfield Marine Bank v. Property Tax Appeal Board</u>, 44 Ill.2d 428 (1970). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. <u>National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board</u>, 331 Ill.App.3d 1038 (3rd Dist. 2002). After considering the evidence and testimony provided by the parties, the Board finds a reduction in the subject's assessment is warranted.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. The appellant argued the subject property had a market value of $5,100,000 as of the assessment date based on the appraisal and testimony provided by Salisbury. The board of review contends the subject property had a market value of $7,000,000 based on the testimony and evidence provided by Ireland. The intervening school district contends the subject property had a market value of $10,750,000 as of the assessment date based on the appraisal and testimony provided by Gorman. The subject property had a final assessment of $2,556,666, which reflects a market value of approximately $7,693,850 using the 2005 three year median level of assessments for McLean County of 33.23%.

First, the Board finds the parties were in general agreement with respect to the physical description and condition of the subject property. The Board also finds the parties were in general agreement that the subject property is located in a very strong commercial area and perhaps the strongest commercial area in Bloomington-Normal. The Board further finds the subject property should be considered an anchor department store attached to a regional mall.

Of the three valuation witnesses only two developed a cost approach to value. Ireland prepared a cost analysis using the Marshall & Swift commercial cost estimator. However, the cost calculation was as of December 2006, almost two years after the assessment date at issue. As a result, the Board gives this estimate little weight.

Gorman also developed a cost approach to value. The Board finds, however, his cost approach overestimates the value of the subject property. In estimating a value under the cost approach Gorman first estimated the land value using 12 land sales. Using these sales Gorman estimated the subject site had a unit value of $20.00 per square foot or $2,000,000. After reviewing the data in Gorman's appraisal, the Board finds his estimated land value is excessive. The Board finds the best land comparables in Gorman's report were land sales 5, 6, 8, 9 and 10. Land sales 5 and 6 were located adjacent to Eastland Mall and were purchased by the mall. Sale 5 was a 1.434 acre site that was vacant at the time of sale in July 2005 and sold for a unit price of $7.99 per square foot. Sale 6 was adjacent to the mall but was improved with a medical building at the time of sale. This 1.5667 acre site sold in July 2005 for a price of $11.01 per square foot. Sale 8 was a vacant 3.07 acre parcel that sold in January 2006 for a unit price of $9.72 per square foot. Both sales 9 and 10 were vacant parcels located at the entrance of College Hills Mall in Normal. These parcels contained 3.209 and 1.189 acres and sold in June 2004 and September 2006 for $10.00 and $11.00 per square foot, respectively. In summary these sales had unit prices ranging from $7.99 to $11.01 per square foot. Considering these most representative sales the Board finds the subject parcel had a unit market value of $10.00 per square foot.

In estimating the cost new of the improvements Gorman used the Marshall Valuation Service to estimate a replacement cost new of the building of $9,739,781. Gorman deducted 10% for physical depreciation using the age life method based on data contained in the Marshall Valuation Service cost manual. According to Gorman the manual indicated the subject would have a life expectancy of 40 to 50 years and the subject had an actual age of 5 years. He opted to use a 50 year life span and made a 10% deduction for physical depreciation. Gorman did not make any deduction for either function or economic obsolescence. The Board finds there should have been some deduction for functional obsolescence due in part to approximately 24,000 square feet of the subject not being utilized. Furthermore, Salisbury testified there is always functional obsolescence in any kind of anchor store or big box store and there would be significant depreciation in this building. (Transcript page 46.) The Board finds, however, that Salisbury did not quantify the amount of obsolescence attributed to this building because he did not prepare a cost approach to value. Nevertheless, the Board finds that Gorman's failure to make any deduction for functional obsolescence results in overstating the value of the subject property's improvement under the cost approach. In summary, the Board finds Gorman overstated the value of both the subject's land and the subject's improvement under the cost approach; therefore, the Board gave little weight to the conclusion of value under the cost approach.

With respect to the income approach to value the Board gave less weight to Ireland's conclusion due to size of the comparable rental he used to develop the estimate of market rent. Ireland's documentation contained only one rental comparable and it was less than half the size of the subject building.

In estimating market rent under the income approach, Salisbury submitted information on 10 comparable rentals that he identified as anchor stores[1]. These properties ranged in size from 79,216 to 161,630 square feet with lease dates ranging from 1996 to 2003 and rentals ranging from $3.06 to $4.25 per square foot. Gorman submitted rental data on 49 comparables.[2] The Board finds that Gorman's list included all the comparables utilized by Salisbury. In comparing the data on these common comparables the only difference was with respect to Salisbury's comparable number 4. Salisbury reported this Carson Pirie Scott located in St. Charles, Illinois, as having 100,000 square feet and a rental of $3.34 per square foot. Gorman reported this store as having 141,805 square feet and a rental of $5.85 per square foot. The Board finds that Gorman did not segregate or otherwise identify

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[1] The Board finds that one of Salisbury's comparables rentals was listed twice.
[2] The Board finds that Gorman's list of comparable rentals included duplicates.

his rental comparables as either anchor department stores or as freestanding big box stores. The Board finds that the most comparable rental properties should be anchor stores at regional malls. Because Gorman did not otherwise identify his comparables the Board gave less weight to his data and estimate of market rent. The Board further finds that 16 of Gorman's comparables contained less than 70,000 square feet, or were less than 50% the size of the subject, calling into question whether these properties are truly rental comparables. Because Gorman's data contained numerous smaller stores as juxtaposed with the subject, the Board finds his estimate of market rent of $7.00 per square foot is excessive.

The Board finds the best rental comparables in the record were the common rentals submitted by Salisbury and Gorman. The Board finds that both appraisers utilized the Sears store located in the Eastland Mall that had a lease commencing in 1996 and had rental rates from 2002 through 2004 ranging from $3.38 to $3.52 per square foot. The Board also finds two other comparables had recent lease dates commencing in 2003 with rentals of $3.92 and $4.25 per square foot. After considering these common comparables the Board finds the subject property had a market rent of $4.00 per square foot, slightly greater than Salisbury's estimate of $3.50 per square foot. Using this estimate of market rent the Board finds the subject property had a potential gross income of $604,072. Based on the testimony and evidence in the record the Board finds a vacancy and collection loss of 1.5% is appropriate resulting in an effective gross income of $595,010. The Board further finds that Salisbury and Gorman were in near agreement with respect to the percentage deduction for operating expenses and reserves of 5% and 4% of effective gross income, respectively. Deducting 4% of the effective net income for expenses and reserves results in a net income of $571,210. The Board further finds both Salisbury and Gorman agreed that a capitalization rate of 9.5% was appropriate for the subject property. Dividing the subject's net income by the capitalization rate results in an estimated value under the income approach of approximately $6,000,000.

The Board next reviewed the comparable sales used by the respective valuation witnesses. The Board finds that the sales used by Ireland were not similar to the subject in size; therefore, little weight was given this evidence. The Board finds the sales data used by Gorman in the sales comparison approach should be given little weight. First, the Board finds sales 1 and 2 were freestanding stores not connected to a regional mall, unlike the subject property. Additionally, sale 2 was built to suit and had a tenant in place at the time of sale which may be considered the sale of a leased fee. The Board finds that Gorman sales number 3 and 5 occurred in 1998 and are dated. Furthermore, sale 3 was an allocation and the transaction was a sales-leaseback, which calls into question whether the allocated price was truly reflective of market value. Additionally, comparable sale 4 was located in a mall that was in distress and in poor condition. The Board further finds that Gorman's comparables sales 1, 2 and 5 were not particularly similar to the subject in size ranging from 32,000 to 88,306 square feet. For these reasons the Board finds little can be given the conclusion of value contained in Gorman's sales comparison approach.

The Board finds the best comparable sales in the record were those included in Salisbury's appraisal. These were anchor department stores that ranged in size from 94,231 to 254,720 square feet. The comparables ranged in age from 5 to 35 years old and sold from January 2002 to July 2005 for prices ranging from $2,750,000 to $9,000,000 or from $25.77 to $37.63 per square foot. The Board finds Salisbury's comparables 6 through 8 were most similar to the subject in age and sold most proximate in time to the assessment date at issue. These sales ranged in age from 5 to 8 years old and sold from June 2004 to July 2005 for prices ranging from $33.38 to $37.63 per square foot. Considering this data the Board finds the subject had an indicated value under the sales comparison approach of $37.50 per square foot of building area or $5,660,000.

In conclusion, after giving most weight to the income data and the comparable sales as discussed herein, the Property Tax Appeal Board finds the subject property had a market value of $5,850,000 as of January 1, 2005. Since market value has been determined the 2005 three year median level of assessments for McLean County of 33.23% shall apply.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.

Chairman

Member

Member

Member

Member

DISSENTING:

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: April 25, 2008

Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.